

## REMARKS

The following remarks are submitted in response to the Final Office Action mailed June 26, 2008. Claims 1-21 remain pending. Claims 1-21 have been rejected. In this amendment, claim 4 was amended to correct a typographical error (there is no antecedent basis for “the first elongate member” or “the second elongate member”). No new material has been added. Favorable reconsideration is respectfully requested in light of the following comments.

### ***Claim Rejections - 35 U.S.C. § 102***

On page 2 of the Office Action, the Examiner rejected claims 1-5 and 13-21 under 35 U.S.C. §102(e) as being anticipated by Walak et al. (U.S. Patent No. 6,540,767). After careful review, Applicant respectfully traverses the rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP 2131).

In particular, the claimed invention is directed to an intravascular filter that has an elongate member, an anchoring member attached to the elongate member and a cutting member that is disposed on the elongate member and that generally faces towards a central axis of the filter. At a minimum, the cited reference fails to disclose the claimed cutting member.

The Examiner appears to assert that the feature identified as reference numeral 50 on Figure 2 of Walak et al. is a “cutting member”. Applicant respectfully disagrees with this assertion. In column 4 of the specification of Walak et al., reference numeral 50 is clearly identified as an “anchor”. Further, “anchors 50 and 52 include a plurality of sharp projections which penetrate the walls of the blood vessel 22.” (Column 4, lines 48-49). It may be reasonable to assume that the tips of the sharp projections may serve to

puncture the inner surface of the vessel wall, but they hardly serve as an “edge” that may “cut”.

One skilled in the art will recognize that the purpose of an “anchor” on a thrombosis filter is not to “cut”, but to hold the filter in place within the vessel. Additionally, one skilled in the art will recognize that the function of feature 50 of Walak et al. is to prevent the sharp projection 54 from penetrating through the entire wall of the blood vessel (i.e. to limit the depth of penetration of the sharp projection 54 into the wall of the vessel). If the sharp projection 54 was allowed to penetrate unabated through the vessel wall, it may cause damage or injury to organs or body parts adjacent to the vessel. The feature referenced by the Examiner as a cutting member clearly does not serve the purpose of “cutting”, nor would one skilled in the art use it for such.

Nowhere does Walak et al. appear to expressly or inherently describe feature 50 as a cutting member. As the cutting member appears to be missing from the cited reference, Walak et al. cannot be considered as anticipating the claimed invention. Withdrawal of the rejection and favorable reconsideration is respectfully requested.

***Claim Rejections - 35 U.S.C. § 103***

Applicant respectfully traverses the Examiner’s rejection of claims 6-12 under 35 U.S.C. §103(a) as being unpatentable over Walak et al. (U.S. Patent No. 6,540,767). Claim 1, from which claims 6-12 depend and further limit, is distinguished above as being patentable over Walak et al. As claims 6-12 include the elements of claim 1, and also add additional features, claims 6-12 are similarly patentable over the cited reference. Withdrawal of the rejection and favorable reconsideration is requested.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are in condition for allowance, and issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By his Attorney,

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